

Clean Power Plan: U.S. Environmental Protection Agency U.S. Court of Appeals (D.C. Circuit) Initial Brief

Arkansas Environmental, Energy, and Water Law Blog



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

03/31/2016

The United States Environmental Protection Agency ("EPA") filed its initial brief in the United States Court of Appeals for the District of Columbia ("Court") in response to the various parties that have challenged the Clean Power Plan rule. See *State of West Virginia, ET AL, v. United States Environmental Protection Agency, ET AL*. No. 15-1363 (and consolidated cases).

The Clean Power Plan was promulgated as a final rule on October 23, 2015 Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 Fed. Reg. 64,662.

The Petitioners challenging the rule include the State of Arkansas. The arguments that EPA makes in its brief include:

- EPA Properly Exercised Its Section 111(d) Authority by Including Generation-Shifting Within the Selected Best System
- Regulation of Hazardous Pollutant Emissions under CAA Section 112 Does Not Bar Regulation of CO2 Emissions under Section 111(d)
- The Rule Poses No Constitutional Issues
- Petitioners Do Not Establish Procedural Error under Section 7607 of the Act
- EPA Identified an Achievable Degree of Emission Limitation Applying the Best System
- EPA Reasonably Considered Statutory Factors, Including costs and Energy Requirements, and Promulgated Appropriate Subcategories and Implementation Requirements
- EPA Reasonably Calculated State-Specific Goals and Determined That All States Will be Able to Develop Compliant Plans

A link to the 200 page EPA brief can be found on the Environmental Defense Fund's website here https://www.edf.org/sites/default/files/content/epa_merits_brief_-_march_28_-_2016.pdf.